

Provision of insufficient information to obtain informed consent (13HDC00538, 16 December 2014)

General surgeon ~ Public hospital ~ District health board ~ Colonoscopy ~ Informed consent ~ Information regarding options ~ Rights 6(1)(b), 7(2)

An elderly man was referred to a DHB surgical outpatient clinic because of a change in his bowel habits, and because he had rectal bleeding. The man was seen by a general surgeon. A CT scan of the man's large intestine found a 17mm polyp in the sigmoid colon, and diverticulosis.

Approximately two months later the surgeon performed a colonoscopy, and a large polyp was removed. Histological examination indicated cancer within the stalk of the polyp with invasive tumour present at the diathermy margins.

The surgeon concluded that the best option for the man was surgery. He did not inform the man of other options or of the risks of surgery for him. He did not discuss the man's case with his colleagues or at a multidisciplinary meeting.

Two months after the colonoscopy the surgeon removed a section of the man's sigmoid colon and performed a primary stapled anastomosis (join). The man stayed in hospital for 18 days postoperatively after which he was discharged.

Almost three months following the man's discharge, a second surgeon performed ileostomy reversal surgery on the man. Following the ileostomy, the man deteriorated and three days postoperatively a third surgeon decided to conduct a laparotomy to exclude any anastomotic leak. The third surgeon recorded that he had discussed the high risks associated with the procedure with the family, and that the man was likely to need intensive care and might not survive the surgery. The man's wife consented to the laparotomy, but there is no evidence that she was the man's legal representative or that he was incompetent to consent himself.

Following the surgery, despite medical intervention, the man failed to respond and continued to deteriorate until, sadly, he died four days postoperatively.

It was held that the man had the right to the information that a reasonable consumer in his circumstances would expect to receive, including an explanation of the treatment options available and an assessment of the expected risks, side effects, benefits and costs of each option. The first surgeon did not provide this information to the man following his diagnosis. Accordingly, the first surgeon breached Right 6(1)(b). Without this information, the man was not in a position to give informed consent to the surgery performed by the first surgeon. Accordingly, it follows that the first surgeon also breached Right 7(1).

Adverse comment was made about a number of shortcomings in the care provided to the man by the DHB.